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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

CAROLYN RODRIGUEZ
SANTIAGO, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

JACKSON HEWITT, INC.,

Defendant.

Case No. '23CV0697 LAB BGS

CLASS ACTION

**COMPLAINT FOR VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT, 47 U.S.C. §§ 227, ET SEQ.
(TCPA)**

JURY TRIAL DEMANDED

1 **CLASS ACTION COMPLAINT**

2 1. Plaintiff, Carolyn Rodriguez Santiago, brings this action against
3 Defendant, Jackson Hewitt, Inc., to secure redress for violations of the Telephone
4 Consumer Protection Act (“TCPA”), 47 U.S.C. § 227.

5 **NATURE OF THE ACTION**

6 2. This is a putative class action pursuant to the Telephone Consumer
7 Protection Act, 47 U.S.C. §§ 227, *et seq.* (the “TCPA”).

8 3. Defendant offers tax preparation services and is one of the largest tax-
9 preparation services in the United States. To promote its services, Defendant engages
10 in aggressive unsolicited marketing, harming thousands of consumers in the process.

11 4. Through this action, Plaintiff seeks injunctive relief to halt Defendant’s
12 illegal conduct, which has resulted in the invasion of privacy, harassment, aggravation,
13 and disruption of the daily life of thousands of individuals. Plaintiff also seeks statutory
14 damages on behalf of herself and members of the Class, and any other available legal
15 or equitable remedies.

16 **JURISDICTION AND VENUE**

17 5. This Court has federal question subject matter jurisdiction over this action
18 pursuant to 28 U.S.C. § 1331, as the action arises under the Telephone Consumer
19 Protection Act, 47 U.S.C. §§ 227, *et seq.* (“TCPA”).

20 6. The Court has personal jurisdiction over Defendant and venue is proper
21 in this District because Defendant directs, markets, and provides its business activities
22 to this District, and because Defendant’s unauthorized marketing scheme was directed
23 by Defendant to consumers in this District, including Plaintiff.

24 **PARTIES**

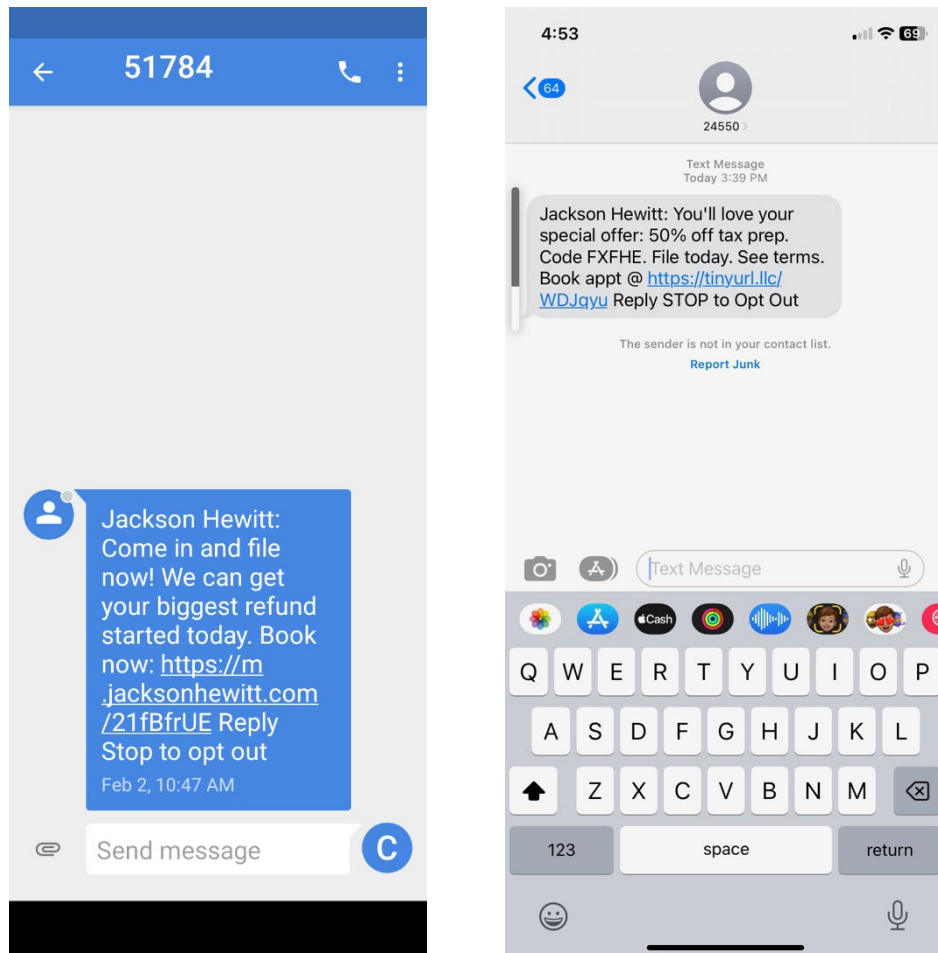
25 7. Plaintiff is a natural person who, at all times relevant to this action, was a
26 resident of San Diego County, California.

1 8. Defendant is a Virginia corporation whose principal office is located at 10
2 Exchange Place, 27th Floor, Jersey City, New Jersey 07302. Defendant directs, markets,
3 and provides its business activities throughout the United States, including throughout
4 the state of California.

5 9. Unless otherwise indicated, the use of Defendant’s name in this
6 Complaint includes all agents, employees, officers, members, directors, heirs,
7 successors, assigns, principals, trustees, sureties, subrogees, representatives, vendors,
8 and insurers of Defendant.

9 **FACTUAL ALLEGATIONS**

10 10. On or about February 2, 2023 and March 22, 2023 Defendant sent
11 telemarketing text messages to Plaintiff’s cellular telephone number ending in 1059 (the
12 “1059 Number”):



1
2 11. Defendant’s text messages were transmitted to Plaintiff’s cellular
3 telephone, and within the time frame relevant to this action.

4 12. Defendant’s text messages constitute telemarketing because they
5 encouraged the future purchase or investment in property, goods, or services, i.e., tax
6 preparation services.

7 13. The information contained in the text message advertises Defendant’s
8 various discounts and promotions, which Defendant sends to promote its business.

9 14. Plaintiff received the subject texts within this judicial district and,
10 therefore, Defendant’s violation of the TCPA occurred within this district. Upon
11 information and belief, Defendant caused other text messages to be sent to individuals
12 residing within this judicial district.

13 15. Defendant’s texts were not made for an emergency purpose or to collect
14 on a debt pursuant to 47 U.S.C. § 227(b)(1)(B).

15 16. At no point in time did Plaintiff provide Defendant with his express
16 written consent to be contacted.

17 17. Plaintiff is the subscriber and sole user of the 1059 Number and is
18 financially responsible for phone service to the 1059 Number.

19 18. Plaintiff has been registered with the national do not call registry since
20 April 21, 2005.

21 19. The TCPA’s implementing regulation, 47 C.F.R. § 64.1200(c), provides
22 that “[n]o person or entity shall initiate any telephone solicitation” to “[a] residential
23 telephone subscriber who has registered his or her telephone number on the national
24 do-not-call registry of persons who do not wish to receive telephone solicitations that
25 is maintained by the federal government.
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27
28

1 20. The text messages originated from a telephone number which upon
2 information and belief was owned and operated by Defendant or on behalf of
3 Defendant.

4 21. Defendant's unsolicited text messages caused Plaintiff actual harm,
5 including invasion of his privacy, aggravation, annoyance, intrusion on seclusion,
6 trespass, and conversion. Defendant's text messages also inconvenienced Plaintiff and
7 caused disruption to his daily life.

8 **CLASS ALLEGATIONS**

9 **PROPOSED CLASS**

10 22. Plaintiff brings this case as a class action pursuant to Fed. R. Civ. P. 23,
11 on behalf of herself and all others similarly situated.

12 23. Plaintiff brings this case on behalf of the Class defined as follows:

13 **Do Not Call Registry Class: All persons in the**
14 **United States who from four years prior to the filing**
15 **of this action (1) were sent a text message by or on**
16 **behalf of Defendant; (2) more than one time within**
17 **any 12-month period; (3) where the person's**
18 **telephone number had been listed on the National**
19 **Do Not Call Registry for at least thirty days; (4) for**
20 **the purpose of selling Defendant's products and**
21 **services; and (5) for whom Defendant claims (a) it**
22 **did not obtain prior express written consent, or (b)**
23 **it obtained prior express written consent in the**
24 **same manner as Defendant claims it supposedly**
25 **obtained prior express written consent to call the**
26 **Plaintiff.**

27 24. Defendant and its employees or agents are excluded from the Class.
28 Plaintiff does not know the number of members in the Class but believes the Class
members number in the several thousands, if not more.

NUMEROSITY

25 25. Upon information and belief, Defendant has placed violative calls to
26 cellular telephone numbers belonging to thousands of consumers throughout the
27

1 United States who are registered on the Do Not Call registry. The members of the Class,
2 therefore, are believed to be so numerous that joinder of all members is impracticable.

3 26. The exact number and identities of the members of the Class are unknown
4 at this time and can only be ascertained through discovery. Identification of the Class
5 members is a matter capable of ministerial determination from Defendant's call records.

6 **COMMON QUESTIONS OF LAW AND FACT**

7 27. There are numerous questions of law and fact common to members of
8 the Class which predominate over any questions affecting only individual members of
9 the Class. Among the questions of law and fact common to the members of the Class
10 are:

- 11 a) Whether Defendant violated 47 C.F.R. § 64.1200(c);
12 b) Whether Defendant's conduct was knowing and willful;
13 c) Whether Defendant violated the privacy rights of Plaintiff and
14 members of the class;
15 d) Whether Defendant is liable for damages, and the amount of such
16 damages; and
17 e) Whether Defendant should be enjoined from such conduct in the
18 future.

19 28. The common questions in this case are capable of having common
20 answers. If Plaintiff's claim that Defendant routinely transmits text messages to
21 telephone numbers assigned to cellular telephone services is accurate, Plaintiff and the
22 Class members will have identical claims capable of being efficiently adjudicated and
23 administered in this case.

24 **TYPICALITY**

25 29. Plaintiff's claims are typical of the claims of the Class members, as they
26 are all based on the same factual and legal theories.

27 **PROTECTING THE INTERESTS OF THE CLASS MEMBERS**

1 30. Plaintiff is a representative who will fully and adequately assert and protect
2 the interests of the Class, and has retained competent counsel. Accordingly, Plaintiff is
3 an adequate representative and will fairly and adequately protect the interests of the
4 Class.

5 **PROCEEDING VIA CLASS ACTION IS SUPERIOR AND ADVISABLE**

6 31. A class action is superior to all other available methods for the fair and
7 efficient adjudication of this lawsuit, because individual litigation of the claims of all
8 members of the Class is economically unfeasible and procedurally impracticable. While
9 the aggregate damages sustained by the Class are in the millions of dollars, the individual
10 damages incurred by each member of the Class resulting from Defendant’s wrongful
11 conduct are too small to warrant the expense of individual lawsuits. The likelihood of
12 individual Class members prosecuting their own separate claims is remote, and, even if
13 every member of the Class could afford individual litigation, the court system would be
14 unduly burdened by individual litigation of such cases.

15 32. The prosecution of separate actions by members of the Class would create
16 a risk of establishing inconsistent rulings and/or incompatible standards of conduct for
17 Defendant. For example, one court might enjoin Defendant from performing the
18 challenged acts, whereas another may not. Additionally, individual actions may be
19 dispositive of the interests of the Class, although certain class members are not parties
20 to such actions.

21 **COUNT I**

22 **Violation of the TCPA, 47 U.S.C. § 227**

23 **(On Behalf of Plaintiff and the Do Not Call Registry Class)**

24 33. Plaintiff re-alleges and incorporates the foregoing allegations as if fully set
25 forth herein.

26 34. The TCPA’s implementing regulation, 47 C.F.R. § 64.1200(c), provides
27 that “[n]o person or entity shall initiate any telephone solicitation” to “[a] residential
28 telephone subscriber who has registered his or her telephone number on the national

1 do-not-call registry of persons who do not wish to receive telephone solicitations that
2 is maintained by the federal government.”

3 35. 47 C.F.R. § 64.1200(e), provides that § 64.1200(c) and (d) “are applicable
4 to any person or entity making telephone solicitations or telemarketing calls to wireless
5 telephone numbers.”¹

6 36. 47 C.F.R. § 64.1200(d) further provides that “[n]o person or entity shall
7 initiate any call for telemarketing purposes to a residential telephone subscriber unless
8 such person or entity has instituted procedures for maintaining a list of persons who
9 request not to receive telemarketing calls made by or on behalf of that person or entity.”

10 37. Any “person who has received more than one telephone call within any
11 12-month period by or on behalf of the same entity in violation of the regulations
12 prescribed under this subsection may” may bring a private action based on a violation
13 of said regulations, which were promulgated to protect telephone subscribers’ privacy
14 rights to avoid receiving telephone solicitations to which they object. 47 U.S.C. § 227(c).

15 38. Defendant violated 47 C.F.R. § 64.1200(c) by initiating, or causing to be
16 initiated, telephone solicitations to telephone subscribers such as Plaintiff and the Do
17 Not Call Registry Class members who registered their respective telephone numbers on
18 the National Do Not Call Registry, a listing of persons who do not wish to receive
19 telephone solicitations that is maintained by the federal government.

20 39. Defendant violated 47 U.S.C. § 227(c)(5) because Plaintiff and the Do Not
21 Call Registry Class received more than one telephone call in a 12-month period made
22 by or on behalf of Defendant in violation of 47 C.F.R. § 64.1200, as described above.
23 As a result of Defendant’s conduct as alleged herein, Plaintiff and the Do Not Call
24 Registry Class suffered actual damages and, under section 47 U.S.C. § 227(c), are

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26 ¹ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report
27 and Order, 18 FCC Rcd 14014 (2003) Available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-03-153A1.pdf

1 entitled, *inter alia*, to receive up to \$500 in damages for such violations of 47 C.F.R. §
2 64.1200.

3 40. To the extent Defendant's misconduct is determined to be willful and
4 knowing, the Court should, pursuant to 47 U.S.C. § 227(c)(5), treble the amount of
5 statutory damages recoverable by the members of the Do Not Call Registry Class.

6 **PRAYER FOR RELIEF**

7 **WHEREFORE**, Plaintiff, individually and on behalf of the Class, prays for the
8 following relief:

- 9 a) An order certifying this case as a class action on behalf of the Class as
10 defined above, and appointing Plaintiff as the representative of the Class
11 and Plaintiff's counsel as Class Counsel;
- 12 b) An award of actual and statutory damages for Plaintiff and each member
13 of the Class;
- 14 c) An order declaring that Defendant's actions, as set out above, violate the
15 TCPA;
- 16 d) An injunction requiring Defendant to cease all unsolicited text messaging
17 activity, and to otherwise protect the interests of the Class;
- 18 e) An award of reasonable attorneys' fees and costs pursuant to, *inter alia*,
19 California Code of Civil Procedure § 1021.5; and
- 20 f) Such further and other relief as the Court deems necessary.

21 **JURY DEMAND**

22 Plaintiff hereby demands a trial by jury.

23 **DOCUMENT PRESERVATION DEMAND**

24 Plaintiff demands that Defendant take affirmative steps to preserve all records,
25 lists, electronic databases or other itemizations associated with the allegations herein,
26 including all records, lists, electronic databases or other itemizations in the possession
27

1 of any vendors, individuals, and/or companies contracted, hired, or directed by
2 Defendant to assist in sending the alleged communications.

3
4 Dated: April 18, 2023

Respectfully submitted,

5
6 By: */s/ Scott Edelsberg*

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Jackson Hewitt Hit with Class Action Over Alleged Spam Texts](#)
